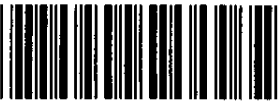
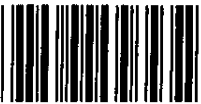


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DEPUTY

Attorney for Defendant  
Richard Thomas Riley

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

(HONORABLE IRMA E. GONZALEZ, JUDGE)

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD THOMAS RILEY (1),

Defendant.

Criminal Case No. 97cr2104-IEG

Date: January 31, 2000  
Time 2:00 P.M.

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR DISCOVERY

Defendant RICHARD THOMAS RILEY, by and through his attorney JAN EDWARD RONIS, respectfully submits the following memorandum of points and authorities in support of his motion for discovery.

**I**

**DISCOVERY**

To preserve his rights and guard against undue prejudice due to delay, the defendant seeks an order compelling discovery of the following material, and further seeks an order establishing a discovery schedule in this case. Defendant requests full discovery pursuant to Rule 16 of the Federal Rules of Criminal Procedure,<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963), the *Jencks* Act (18 U.S.C. § 3500), and the Fifth and Sixth Amendments of the United States

<sup>1</sup>Unless otherwise indicated, all further rule references will be to the Federal Rules of Criminal Procedure.

1 Constitution. For the purposes of Rule 16 discovery and *Brady* the prosecutor "will be  
 2 deemed to have knowledge of and access to anything in the possession, custody or control of  
 3 any federal agency participating in the same investigation of the defendant." *United States v.*  
 4 *Bryan*, 868 F.2d 1032, 1036 (9th Cir.), *cert. denied*, 493 U.S. 858 (1989). Defendant  
 5 requests that discovery be completed reasonably in advance of trial so that he can make use  
 6 of the materials provided in his defense. Defendant seeks discovery of the following:

7 **A. Statements of the Defendant.**

8 Pursuant to Rule 16(a)(1)(A), defendant requests full discovery concerning any  
 9 statements made by him. The rule requires disclosure of any statement of the defendant's in  
 10 the possession of the government in any form. It also requires disclosure of any portion of  
 11 any report or other written record containing the substance of a statement by the defendant  
 12 made to a known government agent, and the substance of any other statement made by the  
 13 defendant to a known government agent that the government intends to use at trial for any  
 14 purpose.

15 The government must disclose not only the substance of the defendant's statement but  
 16 also the substance of the defendant's response to *Miranda* warnings. If the government does  
 17 not inform counsel that the defendant invoked his right to remain silent or his right to counsel,  
 18 the conviction may be reversed. *United States v. McElroy*, 697 F.2d 459, 465 (2d Cir. 1982).  
 19 The Advisory Committee Notes as well as the 1991 amendments to Rule 16 make it clear that  
 20 the government must reveal *all* the defendant's statements, whether oral or written, regardless  
 21 of whether the government intends to introduce those statements

22 **B. Request for Criminal Record, Prior Bad Acts, and Notice Under FRE 404(b).**

23 Defendant requests all evidence, documents, records of judgments and convictions,  
 24 photographs and tangible evidence, and information pertaining to any prior arrests and  
 25 convictions or any prior similar acts or prior bad acts of defendant. The defendant's prior  
 26 criminal record must be produced under Rule 16(a)(1)(B). Evidence of prior similar acts or  
 27 prior bad acts is discoverable under Rule 16(a)(1)(C), and Rules 404(b) and 609 of the Federal  
 28 Rules of Evidence. See *United States v. Cook*, 608 F.2d 1175 (9th Cir. 1979) (en banc), *cert.*

1 *denied*, 444 U.S. 1034 (1980). Pursuant to Federal Rule of Evidence 404(b), defendant  
 2 specifically requests notice concerning any evidence the government plans to introduce against  
 3 him under Rule 404(b) and any prior or subsequent act relating to a specific instance of  
 4 conduct which the government will attempt to introduce under Federal Rule of Evidence  
 5 608(b).

#### 6 **C. Other Documents and Physical Evidence.**

7 Pursuant to Rule 16(a)(1)(C), defendant requests full discovery of all physical and  
 8 documentary evidence and objects, including but not limited to all books, papers, documents,  
 9 photographs, tangible objects, or copies or portions thereof which the government intends to  
 10 introduce as evidence in its case-in-chief, or is material to the preparation of the defense, or  
 11 was obtained from the defendant or which the government claims belong to the defendant.

#### 12 **D. Scientific Reports and Examination.**

13 Pursuant to Rule 16(a)(1)(D), defendant requests full discovery of all scientific tests or  
 14 experiments and results of physical or mental examinations which are material to the defense  
 15 or are to be used as evidence by the government at trial. The government must also give the  
 16 defense adequate notice of the use of the scientific tests or expert witnesses in order that the  
 17 defense has "adequate time to obtain an expert to assist him in attacking the findings of the  
 18 government's . . . expert." *United States v. Barrett*, 703 F.2d 1076, 1081 (9th Cir. 1983).

#### 19 **E. Witness Discovery.**

20 Defendant requests disclosure of any evidence that any prospective witness is under  
 21 investigation by federal, state or local authorities for any criminal or official misconduct.  
 22 *United States v. Chitty*, 760 F.2d 425 (2d Cir.), *cert. denied*, 474 U.S. 945 (1985).  
 23 Defendant also requests any evidence that any prospective witness is biased or prejudiced  
 24 against the defendant, or has a motive to falsify or distort his or her testimony. *Pennsylvania*  
 25 *v. Ritchie*, 480 U.S. 39 (1987) *United States v. Strifler*, 851 F.2d 1197 (9th Cir. 1988), *cert.*  
 26 *denied*, 489 U.S. 1032 (1989); *United States v. Alvarez-Lopez*, 559 F.2d 1155, 1157 (9th Cir.  
 27 1977).

28 ///

1 The defendant requests any evidence that any prospective government witness has  
2 engaged in any criminal act, whether or not resulting in a conviction, and whether any witness  
3 has made a statement favorable to the defendant. *See* Fed. R. Evid. 608, 609 and 613. Such  
4 evidence is discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963). *See Strifler*, 851  
5 F.2d 1197 (witness's prior record); *Thomas v. United States*, 343 F.2d 49 (9th Cir. 1965)  
6 (evidence that detracts from a witness's credibility).

7 Defendant further requests that the government review for impeachment material the  
8 personnel files of any agents it intends to produce as witnesses. *United States v. Henthorn*,  
9 931 F.2d 29 (9th Cir. 1991). *Henthorn* requires that all material information should be  
10 disclosed, and any information which is arguably material should be submitted to the Court  
11 for *in camera* examination. *Id.* at 30-32.

12 Defendant requests disclosure of any evidence, including any medical or psychiatric  
13 report or evaluation, tending to show that any prospective witness's ability to perceive,  
14 remember, communicate, or tell the truth is impaired; and any evidence that a witness has  
15 ever used narcotics or other controlled substance, or has ever been an alcoholic. *Strifler*, 851  
16 F.2d 1197; *Chavis v. North Carolina*, 637 F.2d 213, 224 (4th Cir. 1980); *United States v.*  
17 *Butler*, 567 F.2d 885 (9th Cir. 1978).

18 Defendant also requests the name and last known address of each prospective  
19 government witness, *see United States v. Napue*, 834 F.2d 1311 (7th Cir. 1987); *United States*  
20 *v. Tucker*, 716 F.2d 583 (9th Cir. 1983) (failure to interview government witnesses by counsel  
21 is ineffective); *United States v. Cook*, 608 F.2d at 1181 (defense has equal right to talk to  
22 witnesses), and the name and last known address of every witness to the crime or crimes  
23 charged (or any of the overt acts committed in furtherance thereof) who will *not* be called as  
24 a government witness, *United States v. Cadet*, 727 F.2d 1469 (9th Cir. 1984).

#### 25 **F. Preservation of Jencks Act Material.**

26 Defendant requests that the government preserve all rough notes and other materials  
27 arguably subject to production under Title 18, United States Code, Section 3500 (the "*Jencks*  
28 *Act*") or under Rules 12(I) or 26.2. The government is placed on notice that all such materials

1 will be requested by the defense concerning any government witness called to testify at trial,  
2 and all law enforcement witnesses who testify, regardless of by whom called, at all pretrial  
3 proceedings.

4 The government is also placed on notice that the defense will seek *in camera* review  
5 of all such materials which the government claims are not subject to production, and that such  
6 material must be preserved. See *United States v. Harris*, 543 F.2d 1247 (9th Cir. 1976).  
7 Recognizing that such materials, with the exclusion of materials producible under *Brady v.*  
8 *Maryland*, 373 U.S. 83 (1963), are not subject to production until the close of the witness's  
9 testimony, the defense nonetheless asks that such material be disclosed reasonably in advance  
10 of the relevant hearing so as not to unduly delay the proceedings.

11 **G. Disclosure Concerning Informants and Percipient Witnesses.**

12 Defendant requests discovery concerning all informants who were percipient witnesses  
13 to any of the counts alleged against him, or who otherwise participated in the illegal conduct  
14 alleged against the defendant, and disclosure of each informant's identity and location, as well  
15 as disclosure of the existence of any other percipient witnesses unknown or unknowable to the  
16 defense. See *Roviaro v. United States*, 353 U.S. 52, 61-62 (1957); *United States v. Ordonez*,  
17 737 F.2d 793, 808 (9th Cir. 1984). The identity and whereabouts of all informants should  
18 be disclosed so that defendant has the opportunity to investigate the credibility and background  
19 of the informant prior to trial and to possibly call the informant as a witness at trial.  
20 Furthermore, defendant specifically requests that the government produce the confidential  
21 informants. The government has an obligation to accomplish this or show that despite  
22 reasonable efforts, it was not able to do so." *United States v. Hart*, 546 F.2d 798, 799 (9th  
23 Cir. 1976) (en banc).

24 Furthermore, any information derived from informants that exculpate or tends to  
25 exculpate the defendant, or furnishes sentencing mitigation must also be disclosed. In  
26 addition, the government must also disclose any information indicating bias on the part of an  
27 informant, generally known as *Giglio* material, see *Giglio v. United States*, 405 U.S. 150  
28 (1972), and the line of cases concerning discovery of material bearing on informant

1 credibility. Such information would include what, if any, inducements, favors, or payments  
2 were made to informants to obtain his or her cooperation with the government.

3 **H. Other Exculpatory Evidence.**

4 Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, the defendant  
5 moves that the Court order the government to immediately disclose all evidence in its  
6 possession favorable to him on the issue of guilt or to punishment. The defendant requests  
7 the Court order the government to make a diligent effort to ascertain what evidence it has or  
8 might reasonably discover which would create a reasonable doubt as to the defendant's guilt  
9 in the mind of the trier of fact, and to surrender any such evidence to the defendant  
10 immediately upon its discovery. *Hilliard v. Spalding*, 719 F.2d 1443 (9th Cir. 1983)  
11 (government suppression of possible exculpatory evidence denied defendant due process; no  
12 showing of prejudice required); *United States v. Gardner*, 605 F.2d 1076 (9th Cir. 1980).

13 This request includes any information that may result in a lower sentence under the  
14 United States Sentencing Guidelines, including any cooperation or attempted cooperation by  
15 the defendant, as well as any information that could affect any base offense level or specific  
16 offense characteristics under Chapter Two of the Sentencing Guidelines. Also included in this  
17 request is any information relevant to a Chapter Three adjustment, a determination of the  
18 defendant's criminal history, or any other application of the Sentencing Guidelines.

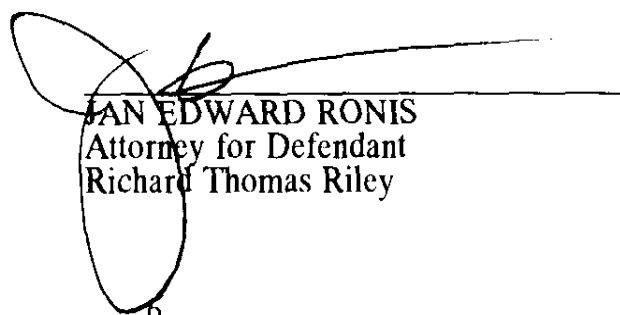
19 **CONCLUSION**

20 For the foregoing reasons, defendant RICHARD THOMAS RILEY, by and through  
21 his attorney JAN EDWARD RONIS, respectfully requests that this Court grant his motion for  
22 discovery.

23 Dated: November 30, 1999

Respectfully submitted,

24 LAW OFFICES OF RONIS & RONIS

25  
26   
27 JAN EDWARD RONIS  
28 Attorney for Defendant  
Richard Thomas Riley